

SECOND REGULAR SESSION

HOUSE BILL NO. 1273

91ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SECREST.

Pre-filed December 18, 2001, and 1000 copies ordered printed.

TED WEDEL, Chief Clerk

3360L.011

AN ACT

To repeal section 287.120, RSMo, and to enact in lieu thereof one new section relating to workers' compensation.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 287.120, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 287.120, to read as follows:

287.120. 1. Every employer subject to the provisions of this chapter shall be liable, irrespective of negligence, to furnish compensation [under the provisions of] **pursuant to** this chapter for personal injury or death of the employee by accident arising out of and in the course of [his] **the employee's** employment, and shall be released from all other liability therefor whatsoever, whether to the employee or any other person. The term "accident" as used in this section shall include, but not be limited to, injury or death of the employee caused by the unprovoked violence or assault against the employee by any person.

2. The rights and remedies herein granted to an employee shall exclude all other rights and remedies of the employee, his wife, her husband, parents, personal representatives, dependents, heirs or next kin, at common law or otherwise, on account of such accidental injury or death, except such rights and remedies as are not provided for by this chapter.

3. No compensation shall be allowed [under] **pursuant to** this chapter for the injury or death due to the employee's intentional self-inflicted injury, but the burden of proof of intentional self-inflicted injury shall be on the employer or the person contesting the claim for allowance.

4. Where the injury is caused by the failure of the employer to comply with any statute in this state or any lawful order of the division or the commission, the compensation and death

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

17 benefit provided [for under] **pursuant to** this chapter shall be increased fifteen percent.

18 5. Where the injury is caused by the willful failure of the employee to use safety devices
19 where provided by the employer, or from the employee's failure to obey any reasonable rule
20 adopted by the employer for the safety of employees, which rule has been kept posted in a
21 conspicuous place on the employer's premises, the compensation and death benefit provided for
22 herein shall be reduced fifteen percent; provided, that it is shown that the employee had actual
23 knowledge of the rule so adopted by the employer; and provided, further, that the employer had,
24 prior to the injury, made a diligent effort to cause his **or her** employees to use the safety device
25 or devices and to obey or follow the rule so adopted for the safety of the employees.

26 6. (1) Where the employee fails to obey any rule or policy adopted by the employer
27 relating to **a drug-free work place or relating to** the use of alcohol or nonprescribed controlled
28 drugs in the workplace, which rule or policy has been kept posted in a conspicuous place on the
29 employer's premises, **or where the employee arrives at such drug-free workplace for work,**
30 **or clocks in for work, or is at an outside location but on authorized business for the**
31 **employer and the employer discovers through a professionally administered and**
32 **documented positive chemical test result for a controlled substance, as that term is defined**
33 **in section 195.010, RSMo, which test result shall be deemed misconduct connected with**
34 **work,** the compensation and death benefit provided for herein shall be [reduced fifteen percent]
35 **deemed void and shall not be awarded** if the injury was sustained in conjunction with the use
36 of alcohol or nonprescribed controlled drugs; provided, that it is shown that the employee had
37 actual knowledge of the rules or policy so adopted by the employer and, provided further that the
38 employer had, prior to the injury, made a diligent effort to inform the employee of the
39 requirement to obey any reasonable rule or policy adopted by the employer.

40 (2) If, however, the use of alcohol or nonprescribed controlled drugs in violation of the
41 employer's rule or policy which is posted and publicized as set forth in subdivision (1) is the
42 proximate cause of the injury, then the benefits or compensation otherwise payable [under]
43 **pursuant to** this chapter for death or disability shall be forfeited. The forfeiture of benefits or
44 compensation shall not apply when:

45 (a) The employer has actual knowledge of the employee's use of the alcohol or
46 nonprescribed controlled drugs and in the face thereof fails to take any recuperative or
47 disciplinary action; or

48 (b) As part of the employee's employment, he is authorized by the employer to use such
49 alcohol or nonprescribed controlled drugs.

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51 **The use of alcohol to the percentage of blood alcohol sufficient under Missouri law to**
52 **constitute legal intoxication shall be conclusively presumed to mean the use of alcohol**

53 **under such circumstances is the proximate cause of the injury.**

54 7. Where the employee's participation in a voluntary recreational activity or program is
55 the proximate cause of the injury, benefits or compensation otherwise payable [under] **pursuant**
56 **to** this chapter for death or disability shall be forfeited regardless that the employer may have
57 promoted, sponsored or supported the recreational activity or program, expressly or impliedly,
58 in whole or in part. The forfeiture of benefits or compensation shall not apply when:

59 (a) The employee was directly ordered by the employer to participate in such recreational
60 activity or program;

61 (b) The employee was paid wages or travel expenses while participating in such
62 recreational activity or program; or

63 (c) The injury from such recreational activity or program occurs on the employer's
64 premises due to an unsafe condition and the employer had actual knowledge of the employee's
65 participation in the recreational activity or program and of the unsafe condition of the premises
66 and failed to either curtail the recreational activity or program or cure the unsafe condition.

67 8. Mental injury resulting from work related stress does not arise out of and in the course
68 of the employment, unless it is demonstrated that the stress is work related and was extraordinary
69 and unusual. The amount of work stress shall be measured by objective standards and actual
70 events.

71 9. A mental injury is not considered to arise out of and in the course of the employment
72 if it resulted from any disciplinary action, work evaluation, job transfer, layoff, demotion,
73 termination or any similar action taken in good faith by the employer.

74 10. The ability of a firefighter to receive benefits for psychological stress [under]
75 **pursuant to** section 287.067 shall not be diminished by the provisions of subsections 8 and 9
76 of this section.